

In the Matter of Merchant Mariner's Document Z-1109381
and all other Seaman Documents
Issued to: GENE H. FETERSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1186

GENE H. FETERSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 20 October 1959, an Examiner of the United States Coast at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman-watertender on board the United States SS DEL MUNDO under authority of the document above described, on or about 13 September 1959, Appellant assaulted and battered a member of the crew, oiler Thomas L. Sousa.

At the hearing, Appellant was represented by counsel of his own choice.

Appellant entered a plea of not guilty to the charge and specification.

The most important evidence introduced was the testimony of Appellant and Sousa. There were no other eyewitnesses to the incident which brought about this hearing.

At the end of the hearing, the Examiner concluded that the charge and specification had been proved. He then entered an order suspending all documents, issued to Appellant, for a period of three months outright plus three months on eighteen months' probation.

FINDING OF FACT

On 13 September 1959, Appellant was serving as a fireman-watertender on board the United States SS DEL MUNDO and acting under authority of his Merchant Mariner's Document No. Z-1109381 while the ship was at Puerto Deseado, Argentina.

Appellant and oil Sousa shared the same room on the ship and had no difficulties with each other prior to this date. They are approximately the same size and age. Appellant was on watch until 2400 on 12 September. He remained up the rest of the night drinking alcoholic beverages intermittently. Between 0600 and 0700,, Appellant provoked a fight with another crew member and was

struck in the mouth. Sousa retired in a sober condition at 0400 after being ashore at a dance.

About 0730, the door to the room banged against Sousa's lower bunk when Appellant opened it to enter. Sousa was awakened enough to voice his objection at being disturbed and he then fell asleep again. Appellant was angered by Sousa's remark. Appellant awakened Sousa and stood over him. Appellant's lips were bloody from the previous fight and he glared at Sousa with a wild look in his eyes. When Sousa attempted to get up, Appellant rained numerous blows on Sousa's head, scratched his face and gouged his eyes. Sousa finally managed to get up, subdued Appellant and then released him. Appellant renewed the fight until it was stopped by other members of the crew. During this second phase, Appellant grabbed Sousa's testicles as a result of which they were cut and skinned. He received first aid treatment. Appellant suffered no noticeable injuries as a result of this fight.

Shortly thereafter, Sousa struck Appellant with flashlight. While ashore that evening, Sousa struck Appellant with a piece of pipe. At the time, Appellant had a beer bottle in his possession.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the Examiner's decision is contrary to the law and the facts.

Sousa's testimony is discredited by his statement that he struck Appellant with a pipe after he attacked Sousa with a beer bottle. The Third Assistant Engineer and Appellant testified that Appellant did not attack Sousa.

There is no evidence that Appellant was treated for injuries or even visibly injured.

In any event, the order is excessive in view of Appellant's prior clear record and his reputation as a good worker.

APPEARANCE: Dodd, Hirach, Parker and Meunier of New Orleans, Louisiana by Harold J. Lamy, Esquire, of Counsel

OPINION

This case presents a question of credibility to be resolved by the Examiner who heard and observed the witnesses. The Examiner stated that he accepted Sousa's testimony as the true version of the fight. This account is reflected in findings of fact. The Examiner stated that he rejected Appellant's testimony that the fight was started by Sousa when he jumped on Appellant as he was leaving the room. In my opinion, there is no reason why the Examiner's findings as to credibility should not be sustained.

The contentions raised on appeal are not persuasive. With respect to the later pipe incident, I not think that Sousa's testimony concerning the incident now under consideration is discredited by his other testimony that he used the pipe only after he was attacked by Appellant with a beer bottle. Appellant was not questioned as to whether this was true. His only testimony on this point was that he "was hit by lead pipe or pipe" (R.23). The Third Assistant Engineer testified that Appellant had a beer bottle "inside of his jacket" (R.34) but "he didn't swing no beer bottle" (R. 31). The latter statement was then qualified by the Third Assistant's indefinite testimony that "he didn't swing, I didn't see him swing" (R. 31). This clearly shows that Appellant did have a beer bottle at the time and that he might have attacked Sousa with it without the Third Assistant seeing the attack. As commented on by the Examiner, Sousa frankly admitted the two subsequent assaults on Appellant.

The testimony of Sousa, which was accepted by the Examiner, indicates that he was injured in the fight and given first aid treatment for such injuries. Appellant admitted that he grabbed Sousa's testicles, but claims that this was done because Sousa was choking Appellant(R. 22).

Appellant admitted that he was up all night, had been drinking alcoholic beverages and was in a fight between 0600 and 0700. This is a further indication that Appellant was in a belligerent, aggressive mood and, in all probability, started the fight with Sousa because of the slight provocation caused by Sousa's comment when he was awakened by the door banging against his bunk.

It is my opinion that this breach of shipboard discipline deserves the Order imposed by the Examiner regardless of Appellant's prior clear record and his reputation as a good worker.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 20 October 1959, is AFFIRMED.

J.A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 16th day of August 1960.